

STATE OF NEW MEXICO
Corrections Department

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RE: Ayers, et al., v. Perry, et al., No. CIV 02-143 8 BB/WWD;
Sandoval v. Lopez, et al., No CLV 02-170 MV/LFG;
Amin Wali (William McGhee) v. LeMaster, D101 CS200100002;
Andrew Ferguson v. LeMaster, D101 CS2001000192;
Andrew Ferguson v. LeMaster, D101 CS20000001 5;
Anthony Hamilton v. LeMaster, D101 CS20001156;
Augustine Granados v. LeMaster, CV200202178;
Chris Baca v. LeMaster, D101 CS20020028;
Christopher Plouse v. LeMaster, D101 CS20000904;
Dennis Carabajal v. LeMaster, D101 CS200 1000460;
Edward Garcia v. LeMaster, D101 CS20020020;
Fernando Hernandez v. LeMaster, D101 CS200 1000454;
Frankie Gonzales v. LeMaster, CS200200016;

Freddie Sanchez v. LeMaster, D101 CS200200047;
Huberto Briones v. LeMaster, D101 CS2002000063;
James Gordon v. LeMaster, D101 CS2001000003
Jared Dukeminier v. LeMaster, D101 CS20020015
Jesse Trujillo v. LeMaster, D101 CR20001177;
Jessie Saenz v. LeMaster, CV200202111;
Joe Saavedra v. LeMaster, D101 C22001000005;
Johnny Pismo v. LeMaster, D101 CR20000903;
Joseph Barboa (Sandoval) v. LeMaster, D101 C2200100021;
Joseph Herrera v. LeMaster, CV200201852;
Leo Ortega v. LeMaster, D101 C220010648;
Leo Salazar v. LeMaster, CV200202107;
Leonard Romero v. LeMaster, CR200000647;
Leonard Shelby v. LeMaster, D101 C220010013;
Les Dotson v. LeMaster, CV200200071, CV200201809;
Manuel Maldonado v. LeMaster, D101 C2200100026;
Marcos Lucero v. LeMaster, D101 C22001000455;
Marcos Pinon v. LeMaster, C2200100544;
Martin Chacon v. LeMaster, CV200200443;
Michael Guzman v. LeMaster, D101 CS2002-0054;
Richard Herrera v. LeMaster, D101 C22001000453;
Ricardo Rodriguez v. LeMaster, D101 CS2001000456;
Robert Lara v. LeMaster, D101 C22001000451;
Sebastian Becleston v. LeMaster, CS-200100025 (SF);
Shawn Ural v. LeMaster, D101 CS200200051;
Steve Sanchez v. LeMaster, D101 CS200200059
Theodore Rios v. LeMaster, D101 CV200201814;
Thomas Martinez v. LeMaster, D101 CS200200023
Travis McGuire v. LeMaster, D101 CS200200021
Vincent Zurla v. LeMaster, CS200200044

Dear Mr. Donatelli, Mr. Cubra, Mr. Bigelow, Ms. Cooper and Ms. Yee:

This letter is to document our agreement with regard to the disposition of the above-referenced cases. If you agree that I have accurately set out our agreement, please indicate by signing at the end of the letter.

At the outset we agree and acknowledge that this agreement constitutes the exchange of good and valuable consideration.

1. In exchange for good and valuable consideration, the New Mexico Corrections Department (hereafter “NMCD” or “Department”) agrees to do the following:

A. **Mental Health**

1. Expand the APA

- a. Designate 96 total APA beds, which will be at SNMCF until at least the end of calendar year 2003. The Department will proceed with all deliberate speed to make 96 beds available at the APA. Said 96 beds will be in place no later than 180 days after this agreement is signed. It must be noted that some renovation is required to these cells before they are suitable for housing APA inmates. Sometime after January 2004, the APA will be moved to CNMCF.
- b. Dedicate a total of 5 mental health clinicians to provide mental health services to the expanded 96-bed APA. The rate will be one mental health clinician for each 20 (or fewer) inmates [$96 / 5 = 19.2$]. The Department will proceed with all deliberate speed to create, convert, and hire this staff. It must be noted that some delay will result from the need to obtain the necessary approvals from the State Personnel Office. The staff will be in place no later than 180 days after this agreement is signed.
- c. Add 20 hours of psychiatry, per week, at SNMCF to serve the APA inmates. Effective no later than August 1, 2003.

2. APA Screening Criteria

- a. Policy language will be added that once an inmate has been placed in the APA, for any reason, the inmate will remain in the APA for at least 90 days after placement.
- b. NMCD will add policy language that, once an inmate who has been in the APA no longer meets the criteria for placement in the APA, said inmate may continue to be housed in the APA if, in the clinical judgment of the APA Mental Health Director, the inmate would suffer significant mental deterioration if returned to Regular Level V/VI housing; provided the Director of Adult Prisons shall have the authority to disapprove such retention.
- c. Implement revised criteria for APA eligibility, as set forth in the following chart, to include a higher GAF score for APA eligibility, increase to 60 from the current 50.
- d. Inmates in Levels V and VI who meet the following criteria will be transferred to and retained in the APA, so long as they continue to meet the criteria for APA housing.

#	Criteria
1	Schizophrenia and other psychotic disorders (schizophreniform disorder, schizoaffective disorder, brief psychotic disorder, shared psychotic disorder, psychotic disorder due to a general medical condition, substance-induced psychotic disorder, psychotic disorder NOS, psychotic features due to any Mood Disorder)
2	major depression (current) with GAF below 60
3	History of major depression within last six months that is currently in remission with a current GAF of 60 or below

4	Bipolar I disorder, Bipolar II disorder, Bipolar disorder NOS
5	Dementia, Delirium, Amnestic Disorder
6	Mental retardation (by DSM-IV criteria) or an IQ of 70 or below and demonstrated impairment in at least two (2) areas of adaptive behavior
7	Personality Disorder with significant and/or chronic self-injury within the past 12 months (include all bona fide suicide attempts)
8	Anxiety Disorders with a GAF of 60 or below
9	Global Assessment of Functioning (GAF) scale of 60 or less, with any DSM-IV Axis I or II diagnosis
10	History of bona fide suicide attempts with the last year
11	Cyclothymia, Dysthymia, Depressive Disorder NOS, Mood Disorder secondary to a medical condition, or substance induced Mood Disorder with a GAF of 60 or below
12	Cognitive Disorder or Mental Disorder related to a medical condition or cognitive disorder NOS with a GAF below 60 (substantiated by neuro-psychological testing)
13	Personality Disorder with psychotic decompensation and/or serious affective symptoms with a GAF of less than 60
14	Bona fide active suicidal ideation within last six months
15	Inmates that discontinue psychiatric or mental health treatment against medical advice and continue to have a GAF of 60 or below
16	Other exceptional cases approved by the Clinical Director of Psychiatry

3. Neuropsychological Testing

- a. Establish a testing referral protocol for neuropsychological testing. The protocol will provide for the following: establish criteria for determining who needs testing; develop a specialized referral form for neuropsychological testing; and, include a wider range of screening and assessment instruments, to be identified by NMCD. The Department will implement either the previously utilized Phase I, II, III testing protocol or another protocol acceptable to the mental health monitor. Said proposed protocol will be submitted by NMCD to the mental health monitor within 30 days of signing this agreement.
 - 1) Inmates in Level V/VI who engage in self-injurious behavior or assaultive behavior will be assessed by a mental health professional to determine whether neuropsychological testing is appropriate; however, not all such inmates will necessarily receive neuropsychological testing. Neuropsychological testing will be based upon screening, identification, and referral.

- 2) For APA inmates, NMCD mental health staff will provide clinically indicated neuropsychological assessment, screening, and testing consistent with the testing referral protocol.
- b. Train mental health staff at Level V and Level VI facilities to identify inmates who meet the criteria.
- c. NMCD will provide such testing through either contract services or Department staff qualified to conduct such testing.

4. Continuity of care for inmates released from the APA

- a. Add language to NMCD policy to require APA Mental Health staff to telephonically staff each APA release with the Mental Health Director or Clinical Supervisor at the receiving facility. The purpose of the telephonic staffing is to develop or review the treatment plan for the inmate that will either be continued or put in place upon arrival at the receiving facility and to coordinate mental health treatment with the receiving facility, and the staffing will be documented in the mental health file in a Documentation Note. If the mental health professionals at the sending and receiving facilities disagree as to the treatment plan, the decision of the mental health professional at the sending facility will control for this initial treatment plan. Mental health staff at the receiving facility will implement the plan, as written to include frequency of treatment sessions, up until the time of the next regularly scheduled review. If, prior to the next regularly scheduled review, the treating clinician at the receiving facility, in his or her clinical judgment, believes a reduction in mental health services is indicated, the case will be referred to the facility Mental Health Director and/or Clinical Supervisor. A telephone staffing will occur between the sending and receiving clinicians and the facility Mental Health Directors and/or Clinical Supervisors before making such reduction in order to discuss the proposed change in treatment. If the mental health staff at the sending and receiving facilities do not concur on the reduction of treatment, the receiving Mental Health Director and/or Clinical Supervisor will make the final determination. Provided, however, once the first regularly scheduled review has been conducted at the receiving facility, the receiving facility mental health staff may amend the treatment plan, including a reduction of services, without consulting the sending facility.
- b. Add language to policy that the Unit Management Team at the APA convene an exit planning meeting for each inmate leaving the APA, regardless of whether the inmate is transferred to Regular V/VI Housing or transferred to Level IV or III. The Unit Management Team will address housing, programming, mental health, and educational issues. In the event of emergency transfers to the Long Term Care Unit or to the Mental Health Treatment

Center, the Unit Management Team will not need to convene an exit planning meeting.

- c. As to any inmate who is referred for placement in Level VA/I, interim or otherwise, if that inmate was previously released from the APA within the immediately preceding 12 months, said inmate shall be screened for APA placement and said screening, regardless of the result, shall be referred to the NMCD Chief Psychiatrist or Mental Health Bureau Chief for determination as to whether the inmate meets criteria for placement in the APA. An inmate who is identified as meeting the criteria for placement will not be held in interim Level VA/I for more than 30 days before transfer to the APA.

5. Addiction Services

NMCD will offer, within existing resources, addiction services in Level V and

in the APA to inmates with co-occurring disorders.

B. Legal Access

1. Ensure that the Rules of Procedure for State and Federal court, including local rules, are available to inmates through facility paralegals.
2. Arrange for facility paralegals to attend training offered by the Public Defender, coordinated with NMCD Office of Legal Services. A second training/meeting with facility paralegals and including the Public Defender will be scheduled approximately six months after the initial training has occurred. The purpose of the meeting is to review any issues that may have come to light during that time period. The second meeting will be coordinated through the NMCD Office of Legal Services.
3. Conduct retraining of facility staff regarding no flat 15-minute time limit on attorney phone calls.
4. Charge inmate photocopy charges of 20 cents per page for qualified legal claims.
5. In the event an inmate is found in possession of another inmate's legal materials and those materials are confiscated, NMCD will make a reasonable effort to return the legal materials to the inmate to whom they belong.
6. Inmates will be allowed to retain legal materials with regard to cases that they intend to file in the near future; provided the type and amount of these legal materials otherwise are in conformance with NMCD policy.

C. In mate witnesses in disciplinary hearings

1. Change to Disciplinary Policy

- a. The charged inmate will be advised that he may prepare written questions for proposed inmate witnesses, such questions to be prepared prior to the hearing.
- b. Once the disciplinary hearing has convened, such written questions will be submitted by the inmate or the inmate's representative to the Hearing Officer. The written questions will be made a part of the record.
- c. The Hearing Officer will determine: the relevancy of the questions submitted; whether the inmate is reasonably available; and, whether the inmate would jeopardize safety (e.g., victim, etc.).
 - 1) If the Hearing Officer determines the questions will not be asked, for example the questions are deemed irrelevant, or the inmate is not reasonably available, or questioning the inmate would jeopardize safety, etc., the Hearing Officer will document on the record the rationale for such determination.
 - 2) If the Hearing Officer determines the questions will be asked, for example, the questions are deemed relevant, and the inmate is reasonably available, and questioning the inmate will not jeopardize safety, the Hearing Officer will either pause the hearing or grant a continuance in order to obtain the witness response to the written questions.
 - 3) An inmate witness in Level V or Level VI or otherwise in segregation will not be brought to the hearing; the Hearing Officer will go to the inmate if the inmate is reasonably available.
 - a) The Hearing Officer will tape record the reading of the question(s) and the inmate witness response.
 - b) The tape recorded testimony will be maintained.
 - 4) Inmate witnesses classified as Levels I, II, III or IV and housed at a Level I, II, III, or IV facility who are reasonably available, whose presence would not jeopardize their safety or the safety of the institution, and who are to respond to relevant questions shall ordinarily appear in person before the Hearing Officer to respond to the written questions.
 - 5) The Hearing Officer will allow for follow up questions as identified in the Implementation Plan, paragraph 2.d below.
 - 6) NMCD will maintain the tapes of disciplinary hearings for a period of one year after the hearing.

2. Implementation Plan

Provide training for Hearing Officer addressing new requirements. The Public

Defender will have the opportunity to participate in the provision of

training.

NMCD and the Public Defender will coordinate the training content in advance.

- a. Evaluate “relevancy” and documenting determinations;
- b. Use of “pausing” or “continuances” of hearings and documenting such;
- c. Value of Hearing Officer having first hand information from inmate witnesses as opposed to reliance upon written statement;
- d. Hearing Officer will make reasonable efforts to identify logical follow up questions, based upon the responses of the inmate witness, and not limit the questioning to those submitted in advance by the charged inmate; and,
- e. Factor such testimony into the Hearing Officer decision.

3. Restoration of Good Time Plan

- a. NMCD will identify inmates who are currently incarcerated and who were housed in Level V or Level VI as follows:
 - 1) Level V- July 1, 2000 to date;
 - 2) Level VI -PNM: March 1, 2001 to date; and,
 - 3) Level VI -SNMCF: September 1, 2001 to date.
- b. NMCD will identify disciplinary reports for any identified inmates (as per I, a-c, above) that meet the following criteria:
 - 1) Found guilty of a major level report (Category A or B);
 - 2) With a forfeiture of good time; and,
 - 3) The record shows that inmate witness(es) were requested by the inmate and were denied for any reason.
- c. For such reports, NMCD will review to determine the validity of denying these witnesses
 - 1) Examples of valid: requested inmate witness no longer in system or no longer at the facility (not reasonably available); requested inmate witness was not an actual witness to the event, and is being called as a character witness (irrelevancy); the requested inmate witness is the victim in the case and it is presumed calling the victim as a witness would jeopardize his safety.
 - 2) Examples of invalid: requested inmate witness denied because the disciplinary officer already interviewed him; requested inmate witness denied because the witness is Level V or Level VI and, on that basis, was deemed to be not reasonably available.
- d. If the reason for denying the inmate witness(es) is determined to be invalid NMCD will do the following:
 - 1) Determine whether the report is for a violent or non-violent offense.
 - 2) Determine whether the report is a substantial basis for placement or retention in Level V or VI. A placement-

related offense is an offense that constitutes the primary or substantial basis for the placement or retention in Level V/VI; and not merely an offense that is provided as background information.

- 3) If the report is for a non-violent offense and is not related to the inmate's placement/retention in Level V/VI, the report will be dismissed and expunged from the inmate's record, forfeited good time will be restored, and any good time the inmate may otherwise have been eligible to earn will be awarded.
- 4) If the report is for a violent offense or is related to the inmate's placement/retention in Level V/VI. NMCD may choose to either:
 - a) Dismiss the report as noted above and expunge from the inmate's record, restore forfeited good time, and award any good time the inmate otherwise have been eligible to earn.

OR

- b) Hold a new hearing, at which the charged inmate may pose questions to previously identified inmate witnesses which were denied by the Hearing Officer and such denial has been identified as invalid.
- e. NMCD will not be required to hold a new hearing, as described in ¶4.d.2, if the inmate witness is no longer in the custody of the Department (that is, incarcerated in one of the prisons) therefore the report will stand.
- f. Violent offenses are defined as the following:
 - A. 1 Murder
 - A.2 Manslaughter
 - A.3 Hostages/kidnapping
 - A.4 Arson
 - A.5 Battery
 - A.6 Assault or battery with a weapon on another person
 - A.7 Assault or battery without a weapon on staff or employee
 - A.8 Assault or battery without a weapon on inmate
 - A.9 Riot
 - A. 10 Inciting a riot
 - A. 11 Escape with force
 - A. 12 Escape without force
 - A. 13 Possession of escape paraphernalia
 - A. 14 Threats
 - A.21 Sexual Misconduct
 - A.22 Rape

D. Cognitive Education

1. Changes to Policy: NMCD will make the following changes to the link

between Cognitive Education and Step/Level movement, and will revise Level V and Level VI policy to reflect such, in writing.

- a. Inmates will be assigned to cognitive education by classification committee and will be expected to participate, consistent with any other program assigned by committee. Failure to participate in the assigned cognitive education program will be considered in the award of good time, in the same manner as other assigned programming.
 - b. Completion of cognitive education will not be a prerequisite for Step progression or Level completion.
 - c. Failure to complete cognitive education lessons will not be used, in whole or in part, for Step retention or Step regression, or for Level retention or regression.
 - d. In the event that an inmate is retained or regressed in Step based upon inappropriate behavior, he will continue his cognitive education, but will not be required to regress in lessons or repeat lessons already completed.
 - e. A completed lesson that is unresponsive or incomplete will be subject to one mandatory re-do. The educator will state why the lesson does not comply with instructions. After the mandatory re-do, regardless of content or completion, the inmate will be moved to the next lesson.
2. NMCD will consider implementing the Recidivism Reduction program at all Level V and Level VI facilities, in addition to cognitive education.
 3. NMCD will award unearned good time, if that good time was withheld due to failure to provide the “correct” answer on cognitive education homework. The determination of NMCD is final.
 4. Mental health and education will conduct program cross-training at Level V/VI facilities as to the Cognitive Education Program.

E. Conditions of Confinement

1. Residential Treatment Beds
 - a. NMCD has current funding to build a 102-bed Mental Health Treatment Center at Central New Mexico Correctional Facility in Los Lunas, New Mexico. NMCD mental health staff will determine the best use of any increased beds.
 - b. Seek funding for Phase II of the new MHTC in the 2004 legislative session; NMCD mental health staff will determine the best use of any increased beds.
2. Crisis bed at PNM

Create a crisis bed at PNM by converting one of the three medical holding cells to a “stripped” cell to eliminate hang points and other items that might be a danger to the inmate.

3. Video visiting:

- a. As the general rule, video visiting will be eliminated and replaced with face-to-face, noncontact visiting for Level V/VI inmates. Exceptions to noncontact visiting will be made on a case by case basis: inmate is deemed to be too ‘ ~dangerous; at the request of the inmate; at the request of the family; etc.
- b. NMCD will proceed with all deliberate speed to construct noncontact visiting areas. It must be noted that some delay will be required to obtain the necessary approvals, to comply with the required procurement regulations and to complete the construction. These visiting areas will be completed no later than 180 days after this agreement is signed.

4. Recreation:

- a. NMCD will implement outdoor recreation at PNM South and SNMCF (already available at PNM North) for Level V/VI inmates.
- b. NMCD will commit to placing one recreational item in each individual recreation area. For example: basketball hoop, dipbar, chin up bar, etc.
- c. NMCD will proceed with all deliberate speed to construct these recreation areas. It must be noted that some delay will be required to obtain the necessary approvals, to comply with the required procurement regulations, and to complete the construction. These recreation areas will be completed no later than January 1, 2004, unless the environmental study required by the federal Environmental Protection Agency or other federal agency indicates an environmental impact and thereby delays the construction project.

5. Other changes to the Table of Services

Area	Level V (5)	Level VI (6)
Cassettes	Increase number of cassettes allowed at steps 4 and 5 <ul style="list-style-type: none"> • Step 4: 10 cassettes • Step 5: 10 cassettes 	Increase number of cassettes allowed at privilege level 4 and 5 <ul style="list-style-type: none"> • Step 4: 10 cassettes • Step 5: 10 cassettes
Photos	Increase number of photos allowed at every step <ul style="list-style-type: none"> • Step 1: 7 photos • Step 2: 10 photos • Step 3: 12 photos • Step 4: 16 photos • Step 5: 20 photos 	Increase number of photos allowed at privilege level 2 through 5 <ul style="list-style-type: none"> • Step 2: 4 photos • Step 3: 5 photos • Step 4: 16 photos • Step 5: 20 photos

Correspondence	<p>Increase number of personal letters allowed to be retained at every step</p> <ul style="list-style-type: none"> • Step 1: 7 letters • Step 2: 10 letters • Step 3: 12 letters • Step 4: 16 letters • Step 5: 20 letters <p>Inmates may receive unlimited correspondence; however, may retain in their possession only the number up to the specified maximum. Once the maximum is reached, the inmate must send home (at own expense) or destroy correspondence that exceeds the maximum allowable.</p>	<p>Increase number of personal letters allowed to be retained at privilege level 2 through 5</p> <ul style="list-style-type: none"> • Step 2: 4 letters • Step 3: 5 letters • Step 4: 16 letters • Step 5: 20 letters <p>Inmates may receive unlimited correspondence; however, may retain in their possession only the number up to the specified maximum. Once the maximum is reached, the inmate must send home (at own expense) or destroy correspondence that exceeds the maximum allowable.</p>
Canteen	<p>Increase dollar amount allowable canteen at steps 2 and 3</p> <ul style="list-style-type: none"> • Step 2: total of \$20 week • Step 3: total of \$25 a week 	No change
Religious Items	<p>Increase allowable number of religious items and religious books at all steps</p> <ul style="list-style-type: none"> • Steps 1-5: 2 small religious items and 2 religious books 	<p>Increase allowable number of religious items and religious books at steps 1 - 3 and at privilege levels 4 and 5</p> <ul style="list-style-type: none"> • Steps 1 - 5: 2 small religious items and 2 religious books
Tier time	<p>ADDED to TOS (actual activity had already been in place) one hour a day, five days a week for Steps 4 and 5</p>	None
In house hobby	<p>ADD for Steps 4 and 5: 1 roll of cellophane for paper craft; 12 colored pencils not to exceed 4 inches in length; 12 pastels</p>	<p>ADD for Level V privilege levels 4 and 5, and for Level VI privilege level 4/5 privileges: 1 roll of cellophane for paper craft; 12 pastels</p>
Visiting	<p>Non-contact visiting as a general rule (as opposed to video visiting) at all steps; non-contact visiting will be implemented immediately at PNM North and will be implemented at PNM South and SNMCF upon completion of non-contact visiting areas. An inmate may be removed from non-contact visiting and placed on video visiting on a case-by-case basis, such removal to meet newly developed policy criteria. All visits have been changed to 2-hour blocks in order to accommodate a greater number of overall visits.</p>	<p>Non-contact visiting as a general rule (as opposed to video visiting) at all steps; non-contact visiting will be implemented immediately at PNM North and will be implemented at PNM South and SNMCF upon completion of non-contact visiting areas. An inmate may be removed from non-contact visiting and placed on video visiting on a case-by-case basis, such removal to meet newly developed policy criteria. All visits have been changed to 2-hour blocks in order to accommodate a greater number of overall visits.</p>
Telephone	<p>Increase frequency and duration of allowable calls at all steps</p> <ul style="list-style-type: none"> • Step 1: One 5-minute call during orientation • Step 2: Six 20-minute calls per month • Step 3: Eight 20-minute calls per month • Step 4: Nine 20-minute calls per month • Step 5: Ten 20-minute calls per month 	<p>Increase allowable calls as follows:</p> <ul style="list-style-type: none"> • Step 2: Two 20-minute calls per month • Step 3: Four 20-minute calls per month • Privilege Level 4: Nine 20-minute calls per month • Privilege Level 5: Ten 20-minute calls per month
Personal reading materials	<p>Increase at steps 1, 2 and 3</p> <ul style="list-style-type: none"> • Step 1: 1 book • Step 2: 3 books • Step 3: 4 books 	<p>Increase at steps 1, 2 and 3</p> <ul style="list-style-type: none"> • Step 1: 1 book • Step 2: 2 books • Step 3: 3 books
Writing paper	<p>At all steps, increase from a maximum of 5 sheets of paper to 10 sheets of paper. Add language that paper is replenishable up to a maximum of 10 sheets, unless paper is being used inappropriately.</p>	<p>At all steps, increase from a maximum of 5 sheets of paper to 10 sheets of paper. Add language that paper is replenishable up to a maximum of 10 sheets, unless paper is being used inappropriately.</p>

F. Additional Education Programs

The following “self-help” type programming will be implemented via ETV and supported by appropriate work book materials. The following programs will be voluntary. Enrolled inmates will have lessons handed out and picked up by education staff. NMCD anticipates that these programs will be implemented during the 3rd calendar quarter of 2003.

1. Family Reunification (purchased curriculum)
2. Anger: Creating New Choices (purchased curriculum)
3. Success Stories: Family Issues and Support Systems (purchased curriculum, based upon actual inmate success stories from former inmates)
4. Success Stories: Work, Anger, and Self-Esteem
5. Success Stories: Release Day
6. Change is an Inside Job (purchased curriculum; based upon “Seven Habits of Highly Effective People”)
7. Building a Trust Account (purchased curriculum; based upon “Seven Habits of Highly Effective People”)

G. Policy issues

The Level V and/or Level VI policy (as appropriate), will be revised

1. Appeal of placement/retention
 - a. Appeal of placement Level V and Level VI: revised policy will add language for a formal appeal process, such appeal to be reviewed and acted upon by the Director of Adult Prisons. The inmate will be advised of his right to appeal by having the appeal language read to him verbatim, and the Department will develop an appeal form to be used for this purpose.
 - b. Appeal of Level VI retention: revised policy will add language for a formal appeal process, which may be utilized by the affected inmate in the event a Unit Management Team/Classification Committee has conducted the periodic placement review required by policy, and determined that the inmate should be retained in VI. Such appeal to be reviewed and acted upon by the Director of Adult Prisons. The inmate will be advised of his right to appeal and the Department will develop an appeal form to be used for this purpose.
 - c. Appeal of Level V retention: revised policy will add language so that if an inmate completes Level V, Step 5 and there is a decision to retain such inmate in Level V, the inmate may appeal such retention/continued placement. Such appeal could be filed after the inmate has remained in Level V, Step 5 for 30 days beyond completion date.

2. UMT: authority and responsibility

- a. Award of good time: revised policy will add language for the Unit Management Team, to include a representative from mental health, to review and recommend monthly good time. This will eliminate the issue of potential good time earnings being determined solely by a correctional staff member who may make negative notations on the inmate's behavior log. (Levels V and VI)
- b. Recommendation for release from Level VI: Clarify policy language to state that if the UMT believes at any point in time, for any reason, that placement in Level VI is no longer appropriate, they may recommend release from Level VI. Any such recommendation by the UMT for release from Level VI must be reviewed by the facility Warden, and the UMT's recommendation and the Warden's recommendation will be forwarded for final decision by the Director of the Adult Prisons Division.

3. Mental health participation in UMT

- a. Add language to policy that mental health staff be a part of the Unit Management Team that makes the classification decision regarding placement of inmates released from Level V/VI, and that mental health staff can provide any input at that time.
- b. Add language to NMCD policy that the Unit Management Team, during regularly scheduled Step reviews or Step regression/retention hearings, will include a member of the mental health staff in the decision-making process.

4. Mental health input into disciplinary process

- a. CD Policy 149200, Mental Health Services for APA Inmates, contains a mechanism for mental health input into disciplinary for APA inmates.
- b. NMCD will implement the following mechanism for mental health staff to have input into the disciplinary process for Regular Level V/VI inmates who are on a mental health case load.
 - 1) The Hearing Officer and/or Disciplinary Officer will submit a list of upcoming disciplinary hearings (both major and minor) to the facility Mental Health Director.
 - 2) The Mental Health Director will determine whether there are or are not mental health issues that should be considered during the disciplinary hearing and advise the Hearing Officer in writing.
 - 3) If there are mental health issues that should be considered, the Mental Health Director will submit a written statement to the Hearing Officer or Disciplinary Officer as to how the mental

health issues should be considered.

- 4) The Hearing Officer or Disciplinary Officer will consider the input from the Mental Health Director.
- 5) The Mental Health Director's input and the Hearing/Disciplinary Officer's consideration shall be made a part of the disciplinary record.

5. Ability to move through steps

- a. Release from Level VI to Level V: revised policy will specify that an inmate reclassified from Level VI to Level V will be placed in Level V Step 3 for a period not to exceed two weeks, for the purpose of evaluation and housing assignment. Upon completion of the evaluation period, the inmate will be placed in Step 4. The amount of time spent in Step 3 will be counted toward the amount of time required for Step 4. Such an inmate will continue with cognitive education from where he left off upon transfer from Level VI and he will not have to restart.
- b. Time spent at MHTC and/or APA: revised policy will specify that a Level V or Level VI inmate at the MHTC and/or APA will receive credit for that period of confinement, assuming he meets the conduct requirements (with consideration given for the affect his mental health condition may have upon his behavior).
- c. All UMT recommendations for Step regression may only be implemented if reviewed and approved by the Deputy Warden.

H. Miscellaneous

1. NMCD will consider out of state placement or placement at LCCF HU4 for inmates in voluntary and involuntary Inmate Protection.
2. NMCD will provide training on all changes to the Level V/VI policy, to include: UMT recommendation for release from Level VI.
3. Correctional Officer cadets will receive training regarding mental illness issues within the inmate population; NMCD mental health staff will review the current course offering, and NMCD will revise as necessary.
4. NMCD will comply with its policy which requires mental health clinical staff receive 12 hours of continuing education annually. This is consistent with NCCHC Standard —19.
5. Inmates will not be sanctioned through the inmate discipline process, the behavior log, or the UMT for merely engaging in normal conversation with other inmates. Normal conversation is considered to be conversation that occurs in a normal tone and level of voice between two or more inmates, and does not contain abusive, derogatory, or inflammatory language directed at staff or other inmates and which does

not disrupt the orderly operation of the facility.

6. Inmates currently in Level V/VI will have an opportunity to appeal their placement in Level V/VI as if it were an initial appeal under the revised policy.
7. NMCD will maintain the Central Office position for “Family Liaison”; primary duties include answering questions from families and facilitating contacts.
8. Good time for recidivism reduction program: Such a policy is in draft form and will be implemented upon completion of the established NMCD policy review process. The policy, when implemented, will allow for a maximum of 30 days of good time, as provided by State law. Such good time will be awarded for completion of the Recidivism Reduction Program, as long as the inmate is otherwise eligible to receive this good time.
9. Policies and forms regarding Level V/VI will be available in Spanish.

II. In exchange for good and valuable consideration, Plaintiffs agree to do the following:

- A. Immediately after the parties have signed this letter agreement, voluntarily dismiss with prejudice all causes of action in Ayers et al. v. Perry et al., except the causes of action set out in Sandoval v. Lopez et al.

III. Within 30 days of Plaintiffs’ voluntary dismissal with prejudice of all causes of action in Ayers et al. v. Perry et al., except the causes of action set out in Sandoval v. Lopez et al., Risk Management will pay counsel for Plaintiffs, in full payment for all attorneys fees and costs a total amount of \$125,000.

IV. In exchange for good and valuable consideration, Petitioners agree to do the following:

- A. Immediately after the parties have signed this letter agreement, dismiss with prejudice, each of the following petitions for writ of habeas corpus in their entirety:

1. Andrew Ferguson v. LeMaster, D101 C22001000192; D101CS2000000115
2. Augustine Granados v. LeMaster, CV200202 178
3. Chris Baca v. LeMaster, D101 CS20020028
4. Dennis Carabajal v. LeMaster, D101 CS200 1000460
5. Freddie Sanchez v. LeMaster, D101 CS200200047
6. Leonard Romero v. LeMaster, CR200000647
7. Leonard Shelby v. LeMaster, D101 CS20010013
8. Les Dotson v. LeMaster, CV200200071, CV20020 1809
9. Michael Guzman v. LeMaster, D101 CS2002-0054
10. Ricardo Rodriguez v. LeMaster, D101 CS2001000456
11. Richard Herrera v. LeMaster, D101 CS2001000453
12. Robert Lara v. LeMaster, D101 CS2001000451

13. Sebastian Eccleston v. LeMaster, CS-200 100025
- B. Immediately after the parties have signed this letter agreement, and upon release from Level V/VI, dismiss with prejudice, each of the following petitions for writ of habeas corpus in their entirety:
1. Fernando Hemandez v. LeMaster, D101 CS2001000454
 2. Huberto Briones v. LeMaster, D101 CS2002000063
 3. Jared Dukeminier v. LeMaster, D101 CS20020015
 4. Leo Salazar v. LeMaster, CV200202107
 5. Theodore Rios v. LeMaster, D101 CV200201814
- C. Immediately after the parties have signed this letter agreement, dismiss with prejudice, each of the following petitions for writ of habeas corpus, with the exception of the issues regarding restoration of “good time” and/or medical issues, as applicable.
1. Frankie Gonzales v. LeMaster, CS200200016
 2. Jesse Saenz v. LeMaster, CV2002021 11
 3. Marcos Lucero v. LeMaster, D101 CS2001000455
 4. Marcos Pinon v. LeMaster, CS200 100544
 5. Shawn Ural v. LeMaster, D101 CS200200051
 6. Steve Sanchez v. LeMaster, D101 CS200200059
 7. Thomas Martinez v. LeMaster, D101 CS200200023
 8. Vincent Zurla v. LeMaster, CS200200044
- D. Immediately after the parties have signed this letter agreement, dismiss with prejudice the issues claiming a violation of ex post facto and denial of legal access to the courts.
1. Edward Garcia v. LeMaster, D101 CS20020020
 2. Joseph Herrera v. LeMaster, CV200201 852
 3. Martin Chacon v. LeMaster, CV200200443
 4. Travis McGuire v. LeMaster, D101 CS200200021
- E. Immediately after the parties have signed this letter agreement, dismiss with prejudice the issue claiming a violation of ex post facto; and dismiss without prejudice the claim for denial of legal access to the courts.
1. Amin Wali (William McGhee) v. LeMaster, D101 CS200100002
 2. Anthony Hamilton v. LeMaster, D101 CS20001156
 3. Christopher Plouse V. LeMaster, D101 CS200000904
 4. James Gordon v. LeMaster, D101 CS2001000003
 5. Jesse Trujillo v. LeMaster, D101 CR20001177
 6. Joe Saavedra v. LeMaster, D101CS200 1000005
 7. Johnny Pisio v. LeMaster, D101 CR20000903
 8. Joseph Barboa (Sandoval) v. LeMaster, D101 CS200100021
 9. Leo Ortega v. LeMaster, D101 CS20010648
 10. Manuel Maldonaldo v. LeMaster, D101 CS200100026

- V. All parties agree to do the following:
- A. Upon all parties signing this letter agreement, NMCD will have a period of 120 days to make the necessary changes to written policy, train its personnel and otherwise implement the measures necessary to comply with the provisions contained in paragraph I.
 - B. After the 120 day period has passed, an audit will be conducted to determine whether NMCD is in substantial compliance with the provisions contained in paragraph I; with a written report to follow. All audits and reports done pursuant to this agreement will address only those items expressly set out in paragraph I, and nothing else. For purposes of this agreement, “substantial compliance” means that NMCD is generally in compliance with the provisions of paragraph I. Incidents of non-compliance do not necessarily prevent a finding of substantial compliance. The determination of substantial compliance shall take into account the extent to which exceptions to compliance are sporadic or isolated in nature, are unintentional and are promptly and properly addressed by corrective action.
 - C. The person who will conduct the audit and submit the report as to the “Mental Health”, “Cognitive Education”, and “Additional Education Programs” portions of paragraph I will be selected by NMCD from the list of three persons identified by Peter Cuba in his letter to Nick D’Angelo dated March 24, 2003, or NMCD may select Dr. Pablo Stewart. The person who will conduct the audit and submit the report as to “Legal Access”, “Inmate Witnesses in Disciplinary Hearings”, “Conditions of Confinement”, “Policy Issues”, and “Miscellaneous” portions of paragraph I will be selected by Mark Donatelli from the list of three persons identified by Nick D’Angelo in his letter to Peter Cuba, Mark Donatelli and Jane Yee dated March 21, 2003. NMCD will be responsible for paying the costs of the auditors.
 - D. As to both the audits and reports, they will be completed within 30 days from the end of the 120 day period specified in subparagraph V.A above.
 - E. To the extent that the audit reports indicate substantial compliance as to any particular provision of paragraph I, Plaintiffs and Petitioners will have no remedy whatsoever as to that particular provision pursuant to this agreement.
 - F. To the extent that the audit reports indicates a lack of substantial compliance as to any particular provision of paragraph I, NMCD shall have no more than 20 days to remedy the non-compliance. If NMCD believes it has remedied the non-compliance before 20 days has passed, NMCD shall notify in writing the auditor, as well as counsel for Plaintiffs and Petitioners, of the measures taken to remedy the noncompliance. If counsel for Plaintiffs or Petitioners are satisfied with the remedy, their counsel shall notify NMCD and the respective Plaintiffs or Petitioners will have no remedy whatsoever as to that particular provision pursuant to this agreement. After the 20 day period passes, or after NMCD has notified the auditor as well as counsel for Plaintiffs and Petitioners of the measures taken to remedy non-compliance, a second audit and written report will be completed within 30 days as to only the provisions that were not in substantial compliance. To the extent the second audit report indicates substantial

compliance as to any particular provision of paragraph I, Plaintiffs and Petitioners will have no remedy whatsoever as to that particular provision pursuant to this agreement.

- G. To the extent that the second audit report indicates a lack of substantial compliance as to any particular provision of paragraph I, Plaintiffs' and Petitioners' only remedy will be to file a separate civil action in New Mexico state district court, for specific performance only, and such civil action must be filed within 60 days from the date of the second audit report or Plaintiffs/Petitioners will waive the right to file such an action. If Plaintiffs/Petitioners file such a civil action for specific performance, and the Court determines that an order for specific performance is appropriate, the Court shall only have the authority to order specific performance for a period of six months from the date of its order for specific performance. After six months passes from the date of any such order, no Court shall have the authority to order specific performance as to any provision of paragraph I of this agreement. If Plaintiffs/Petitioners file an action for specific performance, NMCD shall have the right to obtain a third audit and written report by the same auditor who conducted the second audit, to be completed within 20 days as to those provisions that were not in substantial compliance; and notwithstanding any other provision of this agreement, if the third audit report indicates substantial compliance as to the remaining provisions, Plaintiffs/Petitioners will dismiss their civil action for specific performance and Plaintiffs/Petitioners will have no remedy whatsoever as to those particular provisions pursuant to this agreement. If in accordance with this agreement, counsel for Plaintiffs/Petitioners files an action for specific performance on behalf of any Plaintiff or Petitioner to enforce paragraph I of this agreement, and counsel prevails on such a claim, the total amount of attorney fees and other costs to be awarded, regardless of the number of attorneys or other personnel utilized, shall not exceed \$40,000. The Office of the Public Defender shall not be entitled to attorney's fees.
- H. No other legal action, attorney fees or costs shall be prosecuted by or awarded to Plaintiffs or Petitioners to enforce paragraph I of this agreement, except as expressly provided herein.
- I. Only the Plaintiffs or Petitioners named in this agreement shall have standing to file an action for specific performance pursuant to this agreement. This agreement does not confer any rights upon any other party (i.e., there shall be no third party beneficiary as to this agreement).

Sincerely,

Joe R. Williams
Secretary of Corrections

Nick D'Angelo
General Counsel

